

IN THE UNITED STATES DISTRICT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SAINT-GOBAIN CORPORATION,)	
)	
Plaintiff,)	Civil Action No. 1:04cv0387
)	
v.)	Hon. Wendell A. Miles
)	Senior U.S. District Judge
GEMTRON CORPORATION,)	
)	
Defendant.)	

**AMENDED COMPLAINT FOR DECLARATORY JUDGMENT
AND UNFAIR COMPETITION**

Plaintiff Saint-Gobain Corporation (“Saint-Gobain”) files this complaint for declaratory judgment and unfair competition against defendant Gemtron Corporation (“Gemtron”) and in support thereof alleges as follows:

The Parties

1. Plaintiff Saint-Gobain is a Pennsylvania corporation with a principal place of business in Valley Forge, Pennsylvania.
2. Defendant Gemtron is a Tennessee corporation with a principal place of business in Holland, Michigan. Gemtron is registered to do business in Michigan.

Jurisdiction and Venue

3. Subject matter jurisdiction is proper under 28 U.S.C. §§ 1331 and 1338, 28 U.S.C. §§ 2201 and 2202, 15 U.S.C. § 1125(a) and the Michigan common law.
4. Venue in this district is proper under 28 U.S.C. § 1391(b) and (c).

Patents in Suit

5. United States patent 6,422,673 (“the ‘673 patent”) entitled REFRIGERATOR COMPARTMENT HOUSING VERTICALLY ADJUSTABLE SHELVES, EACH FORMED FROM A PIECE OF TEMPERED GLASS SNAPPED-FASTENED TO AN INJECTION MOLDED FRAME to Craig Bienick of Jenison, Michigan issued on July 23, 2002 to defendant Gemtron (exhibit A hereto).

6. United States patent 6,679,573 (“the ‘573 patent”) entitled REFRIGERATOR SHELF to Craig Bienick of Jenison, Michigan issued on January 20, 2004 to defendant Gemtron (exhibit B hereto).

Actual Controversy

7. Defendant Gemtron, through its patent counsel, has vigorously asserted infringement of the ‘673 and ‘573 patents against plaintiff Saint-Gobain and has threatened a suit for injunctive relief (35 U.S.C. § 283), treble damages (35 U.S.C. § 284) and recovery of attorney fees (35 U.S.C. § 285).

8. Plaintiff Saint-Gobain does not infringe the ‘673 or ‘573 patents.

9. The ‘673 and ‘573 patents, to the extent asserted by defendant Gemtron against plaintiff Saint-Gobain, are invalid.

10. An actual controversy exists between plaintiff Saint-Gobain and defendant Gemtron as to the infringement and validity of the ‘673 and ‘573 patents as asserted by defendant Gemtron against plaintiff Saint-Gobain.

Unfair Competition

11. On information and belief, defendant Gemtron has unfairly competed with plaintiff Saint-Gobain by, without any good faith basis therefor, threatening customers and prospective customers of plaintiff Saint-Gobain with patent infringement.

12. On information and belief, plaintiff Saint-Gobain has been damaged by defendant Gemtron's aforesaid unfair competition.

Relief Requested

WHEREFORE, plaintiff Saint-Gobain respectfully requests:

- A. a declaration that the '673 and '573 patents are not infringed;
- B. a declaration that the '673 and '573 patents as asserted by defendant Gemtron against plaintiff Saint-Gobain are invalid;
- C. an injunction against defendant Gemtron's aforesaid unfair competition;
- D. its damages as a result of defendant Gemtron's unfair competition;
- E. its attorneys fees;
- F. its costs (rule 54(d), Fed. R. Civ. P.); and
- G. such other relief as is proper and appropriate under the circumstances.

Dated: August 27, 2004

Respectfully submitted,

RHOADES McKEE

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